

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MELINDA LAMB and U.S. POSTAL SERVICE,
MOGADORE POST OFFICE, Mogadore, Ohio

*Docket No. 97-978; Submitted on the Record;
Issued December 14, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she had a recurrence of disability effective September 17, 1992 causally related to her April 23, 1991 employment injury.

On April 23, 1991 appellant, then a 26-year-old part-time flexible letter carrier, was turning to the left while casing mail when she developed pain in her right hip. The Office of Workers' Compensation Programs accepted appellant's claim for lumbosacral strain. She received continuation of pay for the period April 24 through June 9, 1991. Appellant returned to limited duty, four hours a day, on June 19, 1991 which was subsequently raised to six hours a day. She received compensation for the periods she did not work through November 6, 1991. The employing establishment informed the Office that appellant was in an automobile accident while off the job on July 27, 1991 and was totally disabled for the period July 29 through August 19, 1991 when she returned to work for four hours a day.

On May 23, 1994 appellant filed a claim for recurrence effective September 17, 1992. She indicated that the employing establishment did not offer her limited duty effective that date. Appellant subsequently received disability retirement in January 1993. She stated that she had constant pain after the employment injury, which was aggravated by the automobile accident of July 27, 1991. In a May 10, 1995 decision, the Office denied appellant's claim for recurrence of disability on the grounds that the evidence of record failed to demonstrate that the recurrence of disability was causally related to the April 23, 1991 employment injury. In a June 16, 1996 decision, an Office hearing representative found that there was an inconsistency in the report of a physician who was requested to give a second opinion. She remanded the case for clarification of the inconsistency. In an October 28, 1996 decision, the Office denied appellant's claim for compensation on the grounds that the evidence of record failed to demonstrate a causal relationship between the employment injury and her claimed condition.

The Board finds that appellant has not met her burden of proof in establishing that her recurrence of disability was causally related to her original employment injury.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition, for which she seeks compensation was causally related to her employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.¹

In a May 3, 1991 report, Dr. William A. Raux, an osteopath, indicated that appellant had evidence of acute pain with muscle spasm in the left paravertebral musculature in the lower lumbar area. He diagnosed acute lumbosacral strain with acute sacroilitis. A May 21, 1991 computerized tomography scan of the lumbar spine showed slight disc bulging at L3-4 and L4-5 with no disc herniation. In a September 26, 1991 report, Dr. Raux stated that appellant could return to limited duty, eight hours a week, with restrictions.

The employing establishment referred appellant to Dr. Edward J. Hanley, a Board-certified orthopedic surgeon, for a fitness-for-duty examination. In an October 1, 1991 report, Dr. Hanley noted that appellant had tenderness to palpation over the posterior superior iliac spine bilaterally but no tenderness in the midline of the lumbar spine, in the lumbar paravertebral muscles bilaterally, in the iliolumbar angles bilaterally, or in the posterior thighs. He reported that straight leg raising was carried out to 100 degrees in both the sitting and supine positions. He indicated that there was no sensory loss to pinprick in the legs. Dr. Hanley commented that his examination did not reveal much in the way of objective signs to account for appellant's subjective complaints except for her posture of a slight list to the left. He stated that any back complaints registered by appellant after the automobile accident on July 27, 1991 were attributable to that accident. Dr. Hanley commented that it was impossible to separate any complaints that appellant had prior to that accident to those complaints she had after the accident. He stated that, but for the accident, appellant would have returned to full-time normal work by the end of August 1991.

The Office referred appellant to Dr. William Parrish for an examination. In a December 4, 1991 report, Dr. Parrish indicated that appellant's lumbar range of motion was within normal limits in all directions, including flexion, extension, lateral bending and rotating. He noted that appellant had some complaints of mild lower lumbar paraspinal muscle discomfort at the extremes of the range of motion. Dr. Parrish concluded that appellant had developed a chronic lumbar back strain and had complaints of lower cervical and upper thoracic pain associated with her car accident. He stated that, of the diagnoses listed, the only one related to the April 23, 1991 employment injury was the chronic lumbar pain in the right low back, which had not completely resolved by the time of the July 27, 1991 accident. Dr. Parrish commented that the automobile accident significantly aggravated the low back pain. He reported that his examination showed no objective physical findings which would preclude appellant from returning to her former job. Dr. Parrish commented that any work restrictions were related to the residual pain from the initial injury and the aggravation of that injury. In an accompanying work restriction form, Dr. Parrish indicated that appellant could sit, walk or bend intermittently for six

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986).

hours a day, lift intermittently for four hours a day, kneel intermittently for three hours a day and bend, squat, climb or twist intermittently for two hours a day. He noted that appellant could lift up to 50 pounds and concluded that she could work 8 hours a day. Dr. Parrish remarked that although appellant had subjective pain, examination revealed no objective abnormal findings.

Prior to the decision of the Office hearing representative, Dr. Raux noted in a February 26, 1996 report that appellant's complaints had persisted for several years. He commented that she had a bulging disc at L4-5. Dr. Raux reported that any attempt to return appellant to work had resulted in increased pain in regard to any lifting, bending or turning. He commented that he did not know what kind of job appellant could return to. Dr. Raux noted that he could not explain why appellant's condition had persisted for five years and professed that he had no idea if she tore ligaments or strained, tore or otherwise injured muscles in the back involved in the motions described that would not repair normally. He indicated that he could not add anything other than the objective evidence of bulging lumbar disc and subjective complaints. This report has little probative value as Dr. Raux admitted that he could not give a rationalized explanation as to how appellant's condition was related to her employment injury five years previously. He did not address the issue of whether appellant had a recurrence of disability after September 17, 1992.

The Office hearing representative noted a discrepancy between Dr. Parrish's statement that appellant had no objective evidence that precluded her from returning to work and his work restrictions which precluded appellant from returning to her position as a letter carrier. She remanded the case for clarification from Dr. Parrish on this discrepancy. The Office indicated, however, that Dr. Parrish had moved and could not be located.² The Office, therefore, referred appellant, together with the statement of accepted facts and the case record, to Dr. Ralph J. Kovach, a Board-certified orthopedic surgeon, for an examination and second opinion. In an October 21, 1996 report, Dr. Kovach stated that appellant had normal stance and normal gait, excellent range of movement to her spine without restrictions. He indicated that appellant had no muscle spasm in the lower back. Dr. Kovach detected no sensory changes in the arms or legs. He concluded that appellant had no objective evidence of disability existing nor any residuals of any previous injuries which she may have sustained regarding her accepted claim for lumbosacral strain. Dr. Kovach reported that the findings were no longer present. He further concluded that appellant could return to the regular duties of her former position at the employing establishment immediately if she were inclined to do so. He stated that she had no objective findings to substantiate her complaints. Dr. Kovach reviewed Dr. Parrish's report and stated that no work restrictions were warranted when there were no physical findings.

The medical reports of Drs. Hanley and Parrish showed that appellant had recovered from the employment injury by December 4, 1991, the date of Dr. Parrish's examination. Neither physician found any objective evidence to support appellant's complaints of pain. Dr. Parrish provided work restrictions only on the basis of appellant's subjective pain, which he related to the employment injury. Appellant did not submit any medical evidence to show that

² A review of physician guides indicate that a Dr. Parrish, an orthopedic surgeon, practices in Hummelstown, Pennsylvania. This is presumably the same Dr. Parrish who examined appellant. However, because of the disposition of this case by the Board, it is unnecessary to request further clarification from Dr. Parrish.

she had a recurrence of disability after September 17, 1992 when she was removed from limited-duty restrictions or that any such recurrence was causally related to the April 23, 1991 employment injury. Dr. Kovach indicated that appellant had no evidence of disability causally related to the employment injury. Appellant has not met her burden of proof in establishing that she had a recurrence of disability due to the April 23, 1991 employment injury.

The decision of the Office of Workers' Compensation Programs, dated October 28, 1996, is hereby affirmed.

Dated, Washington, D.C.
December 14, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member